

REMARKS

Claims 1-29 are pending in the current application. Claim 24 is canceled by this amendment, and is incorporated into claim 14. Claims 3, 4, 8, 18, 21 and 22 have been withdrawn without prejudice to the subject matter therein. The Examiner has acknowledged that claims 1, 2, 5-7, 9-12 and 29 are allowable.

The Examiner has acknowledged that claims 15, 17, 19, 20, 23, 27 and 28 are directed toward allowable subject matter, but are objected to as being dependent upon a rejected base claim. The Applicant submits that claims 15, 17, 19, 20, 23, 27 and 28 have been rewritten in independent form to include all of the limitations of the base claim and any intervening claims, and are in condition for allowance.

The Applicant appreciates the Examiner's indication that claims 13, 16 and 26 would be allowable if rewritten to overcome the rejections under 35 U.S.C. §112 for lacking an antecedent basis. Without reaching the merits of the rejection, the Applicant submits the amendments to claim 13 now more clearly claims the invention. Likewise, changes to claims 16 and 26 have also been made.

35 USC §102(e) Rejections

Claims 14 was rejected under 102(e) as being anticipated by Kan et al (U.S. Pat. No. 6,497,651). The Applicant submits that Kan does not disclose a piercing jaw "in physical communication with a biasing element" as recited in amended claim 14. The Examiner considers 31 and 32 to be biasing elements because they are operated to open and shut the piercing jaw. However, 31 and 32 are pulled in order to open the piercing jaw, and pushed in order to shut the piercing jaw, and hence does not bias the piercing jaw in either an open or shut position. The biasing element is fully supported in the current invention in paragraphs 27 and 29 on page 6 of the original specification. Thus, the Applicant submits that claim 14 is not anticipated by Kan, and is now in condition for allowance.

35 U.S.C. §102(b) Rejections

Claim 25 is rejected under 35 U.S.C. §102(b) as being anticipated by Nakao et al (U.S. Pat. No. 5,156,609). The Applicant submits that Nakao does not disclose a method for maneuvering an implant to a target site comprising "a piercing tip forging the path towards the target in which the housing will travel" as recited in amended claim 25. Figure 8A shows Nakao's device as it is being advanced to the target site. Col. 10, line 66 – col. 11, line 14. The Applicant submits that the forceps 94a and 94b in this Figure are angled toward the inner tubular member 88, and are not forging the path towards the target. In addition, in Nakao the forceps 94 are retracted while the device is being pushed to the target site.

The Applicant submits that at least because of the above stated reasons, the current invention is not anticipated by Nakao.

CONCLUSION

In view of the foregoing, the Applicants respectfully submit that the application is now in condition for allowance. Should the Examiner have any questions concerning this application, the Examiner is invited to contact the undersigned at the number given below.

Respectfully submitted,

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